

## REMARKS

Claim 17 has been amended by inserting the word “and” after “glyphosate” to correct a minor informality. Claim 38, directed to specific three-way herbicidal combinations in glyphosate-resistant maize, has been added. The application as originally filed clearly teaches combinations of glyphosate with at least one further herbicide accordingly no new matter has been added.

**Claims 22, 24 and 26 have been objected to as being of improper dependent form for failing to further limit the subject matter of a previous claim.**

The provisos set forth in the claims are clearly intended to disclaim only what was in the prior art (e.g., two-way mixtures of glyphosate and atrazine in glyphosate-resistant maize). The three-way herbicidal mixtures set forth in claims 22, 24 and 26 were not in the prior art and should not be excluded from the scope of the claims. In order to address the Examiner’s objection, claims 22, 24 and 26 have been cancelled and re-written as new independent claim 38.

**Claims 17-37 have been rejected under 35 U.S.C. 112, first paragraph as allegedly failing to comply with the enablement requirement.** Applicants respectfully traverse.

In section 8 of the outstanding rejection, the Examiner states “Applicant’s specification does not demonstrate synergism of the agents in controlling weeds and gives little guidance to as to what amounts act synergistically.” Further, in section 9 of the office action, the Examiner states “Applicant has not demonstrated synergism for even one combination within this range.”

Applicants request that the Examiner consider the five Rule 132 Declarations previously submitted with Applicants’ response of April 4, 2002, in the parent application Serial No. 09/795,073, now US Patent No. 6,586,367, copies of which are enclosed. On page 2 of the office action dated June 25, 2002, the office accepted that the “data presented in the five declarations demonstrate unexpected crop antagonistic effects of the herbicidal combinations in glufosinate or glyphosate tolerant crops.”

Declaration No. 1 shows the unexpected results of combining glufosinate with S-metolachlor, primisulfuron, prosulfuron, terbuthylazine, S-metolachlor + terbuthylazine, dicamba or dicamba + terbuthylazine in corn which is glufosinate tolerant. The superior performance is surprising because the crop selective antagonistic effect (safening) exerted by these co-herbicides is totally unexpected.

This performance is important because it allows a total control of *Echinochloa crus-galli* with minimal injury on glufosinate tolerate corn. These results are both unexpected and unobvious from the cited references.

Declaration No. 2 shows the unexpected results of combining glufosinate with metolachlor, S-metolachlor, propaquizafop or oxasulfuron in soybeans which are glufosinate tolerant. This superior performance is surprising because the crop selective antagonistic effect (safening) exerted by these co-herbicides is totally unexpected. This performance is important because it allows a total control of the weeds *Abutilon theophrasti*, *Amaranthus retroflexus*, *Chenopodium album*, *Echinichloa crus-galli* and *Setaria faberi* with minimal injury on the glufosinate tolerant soybeans. These results are both unexpected and unobvious from the cited references

Declaration No. 3 shows the unexpected results of the combining glufosinate with metolachlor, S-metolachlor, P-dimethenamid or propaquizafop in canola which is glufosinate tolerant. This superior performance is surprising because the crop selective antagonistic effect (safening) exerted by these co-herbicides is totally unexpected. This performance is important because it allows a total control of the weeds *Abutilon theophrasti*, *Amaranthus retroflexus*, *Chenopodium album*, *Echinichloa crus-galli* and *Setaria faberi* with minimal injury on glufosinate tolerant canola. These results are both unexpected and unobvious from the cited references.

Declaration No. 4 shows the unexpected results of combining glyphosate with various co-herbicides for use on glyphosate-tolerant corn. These results are indicative of the improvement in plant height and/or fresh weight for the inventive mixtures when applied to glyphosate tolerant corn. This improved performance is surprising because the effect exerted by these co-herbicides (increase in plant biomass) is totally unexpected. There was no reduction in weed control efficacy of the herbicides when applied in mixtures or in combination. Glyphosate alone showed no improvement in growth of crop plants, while co-herbicides alone showed insufficient weed control. These results are both unexpected and unobvious from the cited references.

Declaration No. 5 shows the unexpected results of combining glyphosate with various co-herbicides for use on glyphosate-tolerant soybeans. The surprising safening effect of the co-herbicides when used with glyphosate, with no reduction in weed control efficacy is both unexpected and unobvious from the cited references.


Applicants submit that the Declarations under Rule 132 provide clear evidence of synergism for numerous combinations set forth in the pending claims, and thus overcome the rejection under 35 USC 112, first paragraph.

As this response is submitted within five (5) months from the mailing date of the Office Action, a two (2) -month extension of time is included herewith.

However, in the event the undersigned is mistaken in his calculations, an appropriate extension of time to respond is respectfully requested, and the Commissioner is authorised to debit the appropriate fee for that extension, or any other fee, from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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